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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

In re METROPOLITAN SECURITIES  
LITIGATION

No. CV-04-025-FVS

CLASS ACTION

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

~~PROPOSED~~ ORDER  
BIFURCATING AND STAYING  
CLAIMS AGAINST DEFENDANT  
ROTH CAPITAL PARTNERS, LLC

1 Having considered the Motion and Memorandum of Plaintiffs, pursuant to  
2 Federal Rule of Civil Procedure 42(b), for an Order bifurcating and staying all claims  
3 against Defendant Roth Capital Partners, LLC ("Roth"),

4 **IT IS HEREBY ORDERED:**

5 1. This Order incorporates by reference the definitions in the Settlement  
6 Agreement.

7 2. The Court has personal jurisdiction over all parties to the Action,  
8 including all Class Members, Roth and the non-settling defendants, and subject  
9 matter jurisdiction over the Action.

10 3. In light of the Settlement between the Class and Roth pursuant to the  
11 Settlement Agreement dated January 29, 2010 and the trial scheduled to commence  
12 in the Action against non-settling defendants on March 15, 2010, and in order to  
13 allow the Settling Parties to implement and seek final approval of the Settlement, it  
14 will further the interests of convenience, avoiding prejudice to the parties and  
15 expediting and economizing to bifurcate any and all claims that have been made,  
16 could be made or may be made in this Action against Roth pursuant to Federal Rule  
17 of Civil Procedure 42(b).

18 4. All claims, demands and causes of action, whether known or unknown,  
19 that have been asserted, could have been asserted or might be asserted by the Lead  
20 Plaintiffs, the Class, any non-settling defendant or any other person or entity in this  
21 Action or any other proceeding or forum, which are based upon or relate to the  
22 matters alleged in the Consolidated And Fourth Amended Class Action Complaint  
23 are hereby: (i) bifurcated from the Action and shall instead be maintained in a  
24 separate proceeding before this Court (the "Roth Action"); and (ii) stayed pending  
25 determination by the Court as to whether the Settlement, as set forth in the  
26 Settlement Agreement, is fair, reasonable and adequate and should be finally  
27 approved and whether the Judgment dismissing the Action and the Roth Action with  
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1 prejudice as to Roth, including a provision barring any claims against the Roth  
2 Released Parties, should be entered.

3       5. In the event the Action proceeds to trial as to a non-settling  
4 defendant(s): (i) the Class may not use any finding, ruling, order, trial testimony,  
5 verdict or judgment or any attribution of fault or responsibility to Roth, for any  
6 purpose whatsoever against Roth in the Action, the Roth Action or in any other  
7 proceeding or forum; (ii) any finding, ruling, order, trial testimony, verdict or  
8 judgment or any attribution of fault or responsibility to Roth, shall not be admissible  
9 for any purpose whatsoever as against Roth in the Action, the Roth Action or in any  
10 other proceeding or forum; (iii) any finding, ruling, order, trial testimony, verdict or  
11 judgment or any attribution of fault or responsibility to Roth, shall not constitute  
12 collateral estoppel or res judicata as to Roth in the Action, the Roth Action or in any  
13 other proceeding or forum; (iv) Roth shall not use any finding, ruling, order, trial  
14 testimony, verdict or judgment for any purpose whatsoever against the Class in the  
15 Action or the Roth Action or against the Class in any other proceeding or forum; (v)  
16 any finding, ruling, order, trial testimony, attribution of fault or responsibility to any  
17 other defendant, verdict or judgment shall not be admissible for any purpose against  
18 the Class in the Action or the Roth Action or against the Class in any other  
19 proceeding or forum in any litigation between Roth and the Class; and (vi) any  
20 finding, ruling, order, trial testimony, attribution of fault or responsibility to any  
21 other defendant, verdict or judgment shall not constitute collateral estoppel or res  
22 judicata as to the Class in the Action or the Roth Action or against the Class in any  
23 other proceeding or forum in any litigation between Roth and the Class. If the  
24 Settlement is terminated or fails to become effective for any reason, the Class shall  
25 not be estopped from asserting the liability of Roth in the Action, the Roth Action or  
26 any other proceeding or forum as if no settlement had been negotiated or entered  
27 into, and Roth shall not be estopped from challenging liability in the Action, the Roth  
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1 Action or any other proceeding or forum as if no settlement had been negotiated or  
2 entered into.

3 6. The Settling Parties shall have the right to move for an order by this  
4 Court modifying the provisions of, or terminating, this Order.

5 **IT IS SO ORDERED** this 12th day of February, 2010.

6 s/ Fred Van Sickle

7 UNITED STATES DISTRICT JUDGE

8 Presented by:

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10  
11 By:

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